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CANVASS BOARD

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

SANDY WELCH, Candidate

Applicant,

v.

LINDA MCCULLOCH, in her capacity as
Secretary of State and secretary of the
Montana State Canvass Board and STEVE
BULLOCK, MONICA J. LINDEEN, AND
DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

Respondents.

Cause No. DV-12-1369C

**BRIEF IN OPPOSITION
TO APPLICATION FOR RECOUNT**

INTRODUCTION

Applicant Sandy Welch, the unsuccessful candidate for Superintendent of Public Instruction, having failed to petition the Secretary of State for a recount under Mont. Code Ann. § 13-16-211¹, now seeks a statewide recount of the election results pursuant to Mont. Code Ann. § 13-16-301. Welch specifically seeks an order directing each of the 56 election board administrators to conduct a recount. Prayer for Relief, ¶ 4. Despite her focus on a statewide recount, the application only alleges errors in seven out of 56 Montana counties. Defendants oppose this Application because the disputed facts do not offer probable cause to believe that the votes cast in the election were not correctly counted statewide or in the individual counties and precincts questioned.

LEGAL STANDARD

Montana Code Annotated § 13-16-301 allows an unsuccessful candidate to “apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts.” The applicant must show “probable cause to believe that the votes cast for the applicant ... were not correctly counted.” Mont. Code Ann. § 13-16-301 (4). Generally, a recount requested under this part is limited to certain counties or precincts, as made clear by Mont. Code Ann. § 13-16-305:

Limitation of recount to certain counties or precincts

(1) If the application asks for a recount in more than one county or precinct but there are not sufficient grounds for a recount in all counties or precincts, the court *shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.*

¹ The results of the state canvass give the Applicant’s opponent a 2,231 vote advantage, or a margin of defeat of 0.48%. The relief the Applicant seeks, a statewide recount, could have been achieved by petitioning the Secretary of State and posting a bond within 5 days after the official canvass. Mont. Code Ann. § 13-16-211.

1 (2) The county recount board shall recount votes only in those counties or precincts and
2 for those offices or ballot issues specified in the court order.

3 (Emphasis added). This statute limits a potential recount to those specific counties and precincts
4 where the applicant can show sufficient evidence that the votes were not correctly counted.

5 As the Montana Supreme Court consistently reminds us “the paramount and ultimate
6 object of all election laws under our system of government is to obtain an honest and fair
7 expression from the voters upon all questions submitted to them.” *Big Spring v. Jore*, 2005 MT
8 64, ¶ 22, 326 Mont. 256, 109 P.3d 219 (citation omitted). This is worth noting because while the
9 candidates will vigorously press their cause at this hearing, this case is not about them but about
10 the people’s right to have their votes counted accurately. Voter intent should be our guiding
11 principle.

12 ARGUMENT

13 I. THE APPLICANT HAS NOT PLED NOR CAN SHE SHOW SUFFICIENT 14 GROUNDS FOR A STATEWIDE RECOUNT.

15 Welch bases her claim for relief on alleged actions occurring in seven counties. These
16 counties are Missoula (Counts I and III), Fergus (Count II), Beaverhead (Count III), Silver Bow
17 (Count III), Cascade (Count IV), Glacier (Count V) and Lewis and Clark (Count VI). Based on
18 disputed allegations in these seven counties, Welch seeks an order from this Court directing all
19 56 county recount boards to conduct a manual recount. Welch has not pled any facts or alleged
20 any vote-count issues in the remaining 48 counties and thus has not met the requirements for a
21 statewide recount. *See* Mont. Code Ann. § 13-16-301(2) and -305. While the Court may make
22 permissible inferences, probable cause requires more than mere conjecture.

1 Welch's only allegation as to statewide problems that does not completely rely on
2 conjecture is Count I, where she alleges vote-counting problems based on voting machine errors
3 and jamming. However, the M650 tabulators were only used to count ballots in 17 counties in
4 Montana. In 12 of those counties the M650 tabulator was used to count all ballots, while in the
5 remaining five counties the M650 tabulator was used to count only absentee ballots. Thus the
6 alleged problems, which the State refutes below, are therefore limited to at most 17 counties.

7 Affidavit of Alan Miller, Exhibit A.

8
9 **II. THE FACTS ALLEGED ARE INSUFFICIENT TO ESTABLISH THE
PROBABLE CAUSE REQUIRED FOR A RECOUNT.**

10 Counts I through VI allege machine errors due to jamming, violation by local election
11 judges of Mont. Code Ann. § 13-15-206, and that Lewis and Clark County recounted votes in a
12 manner not authorized by law. Examining each of these Counts in turn shows that individually or
13 in totality, they are not sufficient grounds for a statewide recount or for a recount in any single
14 county or precinct.

15 **a. Count I – The M650 Machines Made Tabulation Errors.**

16 Welch alleges that “[t]he machines tabulate or partially tabulate the ballots that cause the
17 jam. They are then reset, with the jammed ballot run again, resulting in that ballot being partially
18 if not completely counted twice. In 13 precincts in Missoula County alone, 399 more votes were
19 tabulated than there were paper ballots counted by the three M650 machines used there.”

20 This is incorrect. The ES&S 650 optical scan machines will jam just like a copier.
21 Folded ballots, for example, if not properly prepped, can jam the M650 tabulators, according to
22 Election Systems & Software (ES&S), the equipment vendor. Affidavit of Tobey Dingbaum,
23 Exhibit B. However, the ballot is never partially tallied. *Id.* The machine will jam and the
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1 reader board will indicate to the operator whether or not the ballot was counted. Affidavits of
2 Tobey Dingbaum and Vickie Zeier, Exhibits B and C. If the ballot did not count, it is put back in
3 the tray to be counted and rescanned. *Id.* If the reader board indicates that it was counted, the
4 ballot is placed with the counted ballots in the processed ballot tray. The operator does not reset
5 the 650; they just hit the start button to resume counting once the jam has been removed. *Id.*

6 The only way a ballot can be counted twice is if the operator does not read the reader
7 board properly and places the ballot in the wrong location. The jam itself does not cause the
8 ballot to be partially counted or counted twice. *Id.* To avoid reader board errors by the operator,
9 an assistant works with the operator to verify the error message and put the ballot in the correct
10 location. *Id.*

11 On occasion, the machine stops when an overvote, write-in, or blank ballot has been
12 scanned. As with a jam, however, the reader board indicates to the operator why the machine
13 stopped and it is up to the operator to place the ballot in the correct location. Affidavit of Vickie
14 Zeier, Exhibit C.

15 According to Missoula County Election Administrator Vickie Zeier, the Missoula County
16 election documents prepared for the official canvass (poll books, absentee ballot reconciliation
17 forms, military ballot reconciliation forms and provisional ballot reconciliation forms) indicated
18 that 58,315 ballots were issued and processed to be counted. *Id.* The optical scanners (including
19 the 650's and M100's) counted 58,313 ballots. The M100's counted 19,580, the 650's counted
20 38,724, and there were nine hand counted ballots for a total of 58,313. *Id.* During a canvass it is
21 the responsibility of the Canvass Board to compare the number of ballots issued by reviewing the
22 poll book which is used at the polling place and the various ballot reconciliation forms to the
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1 number of ballots counted. Missoula County's Canvass Board did not find any errors that
2 questioned the accuracy of the votes cast. *Id.*

3 Missoula County has no documentation that would support Welch's allegation that "[i]n
4 13 precincts in Missoula County alone, 399 more votes were tabulated than there were paper
5 ballots counted by the M650 machines used there." *Id.* The official canvass documents do not
6 support that conclusion. *Id.*

7 These allegations therefore fail to show probable cause of vote-counting errors.

8 **b. Count II – Election Judges Did Not Remake Ballots As Required By Law.**

9 Welch alleges that "throughout the state" election judges re-ran jammed ballots instead of
10 "remaking" the absentee ballot. She only specifically cites to Fergus County, though, where she
11 claims "election judges and poll watchers used sharpie markers and stickers to modify voted
12 ballots so that the M650 machines would accept them."

13 The Secretary of State's Office received notice concerning Fergus County about
14 problems on election night. Lisa Kimmet, Elections Deputy for Secretary of State Linda
15 McCulloch, contacted the Fergus County Election Administrator who stated "[t]here are so many
16 exaggerations and mistruths that it just makes my head spin." The Administrator reported that
17 she had an issue on election night with some ballots, but it was resolved after talking by phone to
18 an ES&S technician. Fergus County Election Administrator Rana Wichman's use of a sharpie is
19 detailed in her Affidavit. Affidavit of Rana J. Wichman, Exhibit D. The ballots, which were
20 printed by ES&S were being consistently rejected by the M650. ¶ 7. After discussing the issue
21 with ES&S "it was determined that the ballots were printed just crooked enough that the machine
22 could not read one of the channel codes." Following ES&S instructions, she adjusted the
23 channel code on the first page using the sharpie. Transferring the votes to new ballots would not
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1 have been an effective solution, as the new ballots would have had the same problem. The local
2 Election Administrator, working with ES&S, developed and implemented a solution that
3 respected the intent of the voters and gave an accurate count of the votes cast.

4 Missoula County Election Administrator Vickie Zeier explains that the counting center
5 that counts absentee ballots does not use the oval stickers to resolve an elector's ballot when
6 voter intent is clear, following guidelines for determining a valid vote as outlined in the Montana
7 Election Judge Handbook. Affidavit of Vickie Zeier, Exhibit C; Montana Election Judge
8 Handbook,
9 [http://sos.mt.gov/Elections/Officials/Forms/Election_Judge_Forms/2012_Election_Judge_Handb](http://sos.mt.gov/Elections/Officials/Forms/Election_Judge_Forms/2012_Election_Judge_Handbook.pdf)
10 [ook.pdf](http://sos.mt.gov/Elections/Officials/Forms/Election_Judge_Forms/2012_Election_Judge_Handbook.pdf). Election officials duplicate the ballot using a resolution ballot and log the original
11 ballot with a resolution number and the duplicate ballot with the same resolution number to tie
12 the two ballots together. At the polling places, the election judges do not cover an over vote or
13 error with a label. The elector, however, may choose to use a label or request a new ballot. If
14 the elector chooses a label he or she corrects their own ballot and places their ballot into the
15 M100 precinct optical scan machine which counts the ballot. *Id.*

16 Therefore most ballots that are rejected are duplicated onto a resolution ballot. And the
17 few cases where voters corrected a mistake themselves does not violate the Election Judge
18 Handbook, and in fact is specifically allowed by Mont. Code Ann. § 13-15-206(4)(a)(ii) as a
19 clear indication of "the voter's intent." In any case, Mont. Code Ann. § 13-15-206(4)(b) only
20 requires transfer of votes to a "new ballot" if the ballot "could not be processed by the voting
21 system due to the ballot's condition." Where an elector chooses to use a label, that correction
22 makes it so that the ballot can be processed by the machine, making a transfer to a new ballot
23 unnecessary. The law only requires a transfer to a new ballot "if the voting system cannot
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1 process the ballot” Here all ballots were ultimately processed by the voting system as
2 required.

3 Consequently, these allegations also fail to show probable cause of vote-counting errors.

4
5 **c. Count III – Election Judges Failed to Issue New Ballots to Correct Errors as Required By Law.**

6 Welch next alleges that she “is aware so far that in Beaverhead County, Missoula County,
7 and Silver Bow County, election judges believed it proper to put stickers on ballots themselves to
8 correct errors for voters rather than issuing new ballots” something she claims, without authority,
9 “was widespread throughout Montana.”

10 The Deputy Missoula County Attorney has looked into the concern regarding stickers
11 used by voters to cover marks on their ballots. Exhibit E.

12 She believes that the concern arises from of a lack of understanding of county
13 procedures because the counting procedures vary somewhat from county to county. *Id.* As
14 discussed above in Missoula County, the stickers are placed on the ballots by the voters and then
15 immediately placed, by the voter, into the M100, which counts the vote.

16 More specifically, ballots that are cast at the polling locations in Missoula County, other
17 than provisional ballots, are run through the M100 machines. *Id.* The ballot is placed into the
18 machine by the voter. If the voter has a mark that indicates an overvote, the M100 will tell the
19 voter there is an overvote. The voter then has the following options: (1) leave it as an overvote;
20 (2) cover the mark the voter does not want counted; or (3) void the ballot and vote a new ballot.
21 *Id.* If the voter chooses to place a sticker on the unwanted vote, the voter then runs the ballot
22 through the M100, at which time the ballot is counted. The same process is used when a voter
23 realizes while voting that an error or stray mark was made.

1 According to Beaverhead County Election Administrator Debbie Scott, two absentee
2 voters came to the Clerk and Recorder's Office prior to election day and requested correction
3 stickers to fix errors they had made on their ballots. Affidavit of Debbie Scott, Exhibit F. They
4 were offered replacement ballots, but insisted that they only wanted to correct their ballots and
5 not vote a completely new ballot. In these two cases, the voters themselves placed the correction
6 sticker on their ballots. *Id.* During the vote counting process, counting judges used correction
7 stickers to cover stray marks or incomplete erasures of ovals on several ballots where the voter's
8 intent was clear. The correction stickers were placed over the un-voted ovals in order to be
9 properly counted by an M650 or M100 voting machine. *Id.*

10 According to Butte-Silver Bow Election Administrator Sally J. Hollis, Silver Bow uses
11 13 M-100 machines at designated precincts. Affidavit of Sally Hollis, Exhibit G. When an
12 elector has voted for the wrong person, the elector informs the chief election judge of the error.
13 The chief judge asks the elector to fill out a new ballot, but if the elector refuses and states they
14 want a sticker to cover the error themselves, one is supplied. Only the elector touches the sticker
15 and applies it to the wrong candidate and then inserts the ballot into the M-100 precinct optical
16 scan machine which counts the ballot. At no time did any chief judge or judges touch or look at
17 the voter's ballot. *Id.*

18 The tabulating for Silver Bow was done in the Annex, at the back of the Civic Center,
19 with the five M-100 machines. This is accomplished by a Resolution Board with two teams of
20 three that addressed any problems with a ballot. The Board duplicates the ballot using a
21 resolution ballot and filling out the Resolution Ballot Board Reconciliation Form. Stickers are
22 not used in the Annex.

1 Again, in the cases where an error was corrected, the sticker was applied by the voter,
2 accept for a few cases in Beaverhead County, and thus did not violate the Election Judge
3 Handbook, and was allowed by 13-15-206(4)(a)(ii) as a clear indication of “the voter’s intent.”
4 Even in Beaverhead, a sticker was only applied to correct a stray mark or incomplete erasure
5 where voter intent was clear, as allowed by the Secretary of State’s Guidelines. *See Jore*, ¶ 24
6 (citing to ARM 44.3.2402(1)(a) (where “two (or more) designated voting areas have been
7 marked and one (or more) mark has been erased, but residue is left [the] election official shall
8 clarify the ballot and cause a vote to be counted for the designated voting area that has been
9 marked.”). In any case, after the sticker is applied the machine is then able to process the ballot,
10 making a transfer to a new ballot unnecessary. These allegations thus also fail to show probable
11 cause of vote-counting errors.

12
13 **d. Count IV – Election Judges Failed to Officially Stamp Ballots As Required**
By Law.

14 Welch alleges that “[i]n precincts 18E, 26D, and 26E of Cascade County, election judges
15 did not officially stamp ballots used there. Thus, the election judges failed to follow statutory
16 and administrative requirements for creating a valid ballot.”

17 According to Rina Moore, the Cascade County Election Administrator, her office pre-
18 prints the “official ballot” stamp on the back of the ballots. Affidavit of Rina Moore, Exhibit H.
19 The judges also have a manual stamp that they can use in the case of printer error. Therefore all
20 ballots were either stamped or printed as official ballots. *Id.* Therefore these allegations
21 provided no evidence of vote-counting errors.

22
23 **e. Count V – Election Judges Failed to Provide Official Ballots As Required By**
Law.

1 Welch alleges that “[i]n Glacier County, election judges ran out of ballots and so gave
2 voters photocopies of the ballots to fill out. Photocopied ballots do not have unique ballot
3 numbers nor [sic] the required stub with a unique ballot number. Thus, Glacier County judges
4 could not comply with statutory and administrative procedures required to make [sic] create a
5 valid ballot.”

6 According to Glacier County Election Administrator Glenda Hall, out of 16 precincts in
7 Glacier County, paper copied ballots were used for six precincts when they ran out of printed
8 ballots. Affidavit of Glenda M. Hall, Exhibit I. The paper copied ballots were made on ballot
9 stock they had on hand at the courthouse in batches of 25. The paper copied ballots did not have
10 the numbered stubs on them, but that was denoted in the poll books. Once all precincts ballot
11 supplies were sealed, Ms. Hall personally transported and delivered the paper copied ballots as
12 well as the additional ballot stock to the necessary precincts. She stayed at the CCD Center until
13 the close of polls to oversee the issuance of the paper copied ballots for these particular
14 precincts. At the central count all of the paper copied ballots were hand counted. In fact they
15 were double counted because Glacier County did have a declared write-in candidate, so all of
16 these ballots went through two counting boards. *Id.*

17 Again, the local election administrator developed and implemented a solution that
18 respected the intent of the voters and gave an accurate count of the votes cast.

19 Therefore, Welch’s allegations regarding the use of photocopied ballots is unfounded and
20 fails to show probable cause of vote-counting errors.

21 f. **Count VI – Machines Had Software Errors That Were Allegedly Remedied**
22 **By Procedures Contrary to The Law.**

1 Welch alleges that “[i]n Lewis and Clark County, election day officials unilaterally
2 reopened and conducted a manual recount on November 19, 2012, nearly two weeks after the
3 election, for Senate District 9 due to software errors discovered after election day. Candidate
4 Ripley, whose concerns about the vote count were [sic] had been dismissed by officials, was not
5 informed of the recount until November 20, 2012, the day after the recount was completed.”

6 First, this issue is irrelevant to a statewide recount and only affected the specific senate
7 race mentioned, not the Superintendent race at issue here. It therefore, on its fact, does not
8 constitute probable cause of vote-counting errors as Welch’s challenge.

9 Second, the Lewis and Clark County Board of Canvassers took appropriate action. On
10 November 19, 2012, the Board petitioned for a recount of the Senate District #9 race voted on in
11 precincts 44, 45, and 46 pursuant to Mont. Code Ann. § 13-15-403(4).

12 According to Mont. Code Ann. § 13-15-403(4):

13 (4) If during a canvass the board finds an error in a precinct or precincts affecting
14 the accuracy of vote totals, *the board immediately may petition for a recount of the*
15 *votes cast in the precinct or precincts*, as provided in 13-16-201, or for an
inspection of ballots, as provided in 13-16-420.

16 Emphasis added.

17 The Board of Canvassers petitioned for a recount after State Senate Candidate Ripley made
18 Election Administrator Paulette DeHart aware of his concerns regarding the vote count in Senate
19 District 9. Affidavit of Paulette DeHart, Exhibit J. When first made aware of Candidate
20 Ripley’s concerns, Ms. DeHart double checked the tabulators to ensure that the reports were
21 loading correctly into the reporting software. Seeing that this was working properly, she
22 discussed the issue with the ES&S vendor Susan Chandler who ran a series of tests on all of the
23 ballots on the 650 and discovered that the State Senate District 9 contained some coding error.

1 *Id.* Based on this information, the petition for recount was made and a recount of precincts 44,
2 45, and 46 was conducted on November 19, 2012.

3 This recount was undertaken in accordance with Mont. Code Ann. § 13-15-403(4). The
4 Secretary of State is not aware of a statutory requirement to contact a candidate. The recount
5 was done during a public meeting.

6 Therefore, Welch's allegation that such a recount is "unauthorized under Montana law" is
7 factually incorrect and does not provide probable cause of vote-counting errors. Montana Code
8 Annotated § 13-16-201 sets forth the conditions under which a recount is to be conducted and
9 one of those conditions is that "a canvassing board petitions for a recount as provided in 13-15-
10 403" which is what occurred here. *See* Mont. Code Ann. § 13-16-201(1)(f).

11
12 **III. AN APPLICANT IS NOT ENTITLED TO SEPERATELY CHALLENGE
BALLOTS ONCE A RECOUNT IS PERFORMED.**

13 Welch goes further than simply asking this Court to order a recount. She also requests
14 that "at the conclusion of the recount, this Court set a hearing at which the Applicant may present
15 any challenges she may have regarding ballots that were counted or failed to be counted."
16 Prayer for Relief, ¶ 7. In other words, Welch seeks to have this Court act as a super election
17 administrator and individually assess any ballot they see fit to challenge. This request, besides
18 presenting an unwieldy administrative task for this Court to perform, is not allowed by Mont.
19 Code Ann. § 13-16-301, which only provides for a recount, not for a challenge to individual
20 ballots. And in fact, the Court's jurisdiction ends after "the final count is made by the county
21 recount board." Mont. Code Ann. § 13-16-304(2). Therefore, even if this Court grants a recount
22 for certain precincts or counties, it may not retain jurisdiction to individually consider any
23 challenged ballots after the recount.

1 **CONCLUSION**

2 Welch had a statutory right to request, and pay for, a statewide recount. But she failed to
3 submit her petition within the five-day window and has now failed to provide probable cause for
4 this Court to order recounts in any precincts, much less statewide. The State has shown that in
5 every issue raised in the application proper procedure was followed, voter intent was paramount,
6 and no vote-counting errors occurred. Therefore the Application must be rejected by this Court.

7 Respectfully submitted this 6th day of December, 2012.

8
9 
JORGE QUINTANA

10 Attorney for Secretary of State Linda McCulloch
11 and the Montana State Canvass Board
Special Assistant Attorney General

12  for
J. STUART SEGREST

13 Assistant Attorney General
14 Attorney for Montana State Canvass Board

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that I caused a true and accurate copy of the foregoing Brief in
17 Opposition to Application for Recount to be e-mailed to:

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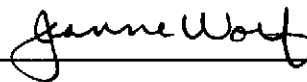
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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

10 Applicant,

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

17 Respondents.

Cause No. DV-12-1369C

**AFFIDAVIT OF
ALAN MILLER**

18 State of Montana)
19) ss.
County of Lewis and Clark)

20 **I, Alan Miller, being first duly sworn, hereby depose and say:**

21 1. I am an Elections Specialist in the Elections and Government Services Division of
22 the Secretary of State's Office. I have held this position since 2001. As an Elections Specialist, I
23 work under the direction of Lisa Kimmet, the Deputy in charge of the Elections and Government
24
25

EXHIBIT

Affidavit of Alan Miller

A

1 Services Division. I work closely with the elections administrators throughout the State of
2 Montana to advise and assist them in their duties with regard to elections.

3 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
4 December 3, 2012.

5 3. Following the election on November 6, 2012, when it became apparent that the
6 statewide race for the Superintendent of Public Instruction was within the parameters of a
7 possible recount pursuant to Mont. Code Ann. § 13-16-211, Recounts allowed if bond posted to
8 cover all costs, an e-mail was sent by Lisa Kimmet on November 8, 2012, to all the election
9 administrators in the state requesting that they provide the office with a cost estimate for their
10 county as to the expenses they anticipated to conduct a recount. See Exhibit A.

11 4. Once the information was received from all the election administrators for the
12 estimated costs of conducting a recount, a document was prepared that contained the compiled
13 information regarding recount costs. See Exhibit B.

14 5. Count I of Applicant's Verified Application contains the allegation that the M650
15 vote tabulators make tabulation errors. The following counties currently use the M650 vote
16 tabulators: Beaverhead, Big Horn, Cascade, Deer Lodge, Fergus, Flathead, Gallatin, Hill,
17 Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Missoula, Powell, Ravalli, Sanders, and
18 Yellowstone.

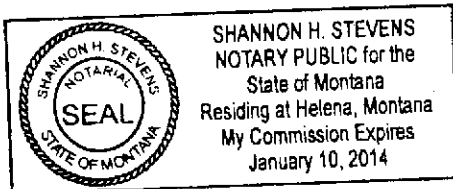
19 6. Generally, a county that only has a M650 (or a M150, an earlier version of the
20 M650) counts all ballots on the M650. A county that has a M650 and a M100, generally counts
21 only absentee ballots (including provisional ballots) on the M650. The M100 counts the poll
22 ballots.

Beaverhead, Flathead, Gallatin, Lake, Missoula, and Ravalli.

DATED this 6th day of December, 2012.

Alan Miller
ALAN MILLER

Signed and sworn to before me on December 6th, 2012



Shannon H. Stevens
Shannon H. Stevens
Notary Public for the State of Montana
Residing at Helena, Montana
My commission expires: 1.10.2014

Wolf, Jeanne

From: Kimmet, Lisa
Sent: Thursday, December 06, 2012 8:35 AM
To: Wolf, Jeanne; Miller, Alan
Cc: Quintana, Jorge
Subject: FW: Recount and Recount Costs

Importance: High

Lisa Kimmet

Elections & Government Services Deputy
Office of Montana Secretary of State Linda McCulloch
406.444.5376
www.sos.mt.gov

From: Kimmet, Lisa
Sent: Thursday, November 08, 2012 2:32 PM
To: Kimmet, Lisa
Cc: Miller, Alan; Stevens, Shannon
Subject: Recount and Recount Costs
Importance: High

Sent via email and fax:

Dear Election Administrators (please note-this request is being sent to Election Administrators only, if someone else on your staff should respond, please forward to them-thanks) -

With the prospect of a possible statewide recount looming, we need to quickly gather cost estimates in case it is a bond recount. Please do your best to **ESTIMATE** what it will cost your county to recount one statewide race in the following categories, and return to us **by close of business on Tuesday**.

I know you will be busy on Tuesday counting provisional, FWAB, and any electronic UOCAVA ballots sent by 8 p.m. on election night and not yet processed, but we have to have each county's cost estimate by that time so that candidates can make an informed decision about whether or not to petition for a recount.

The cost categories are in the table below. You will have to estimate:

1. The number of ballots your county will count (total ballots cast)
2. The hourly wage of the recount board, election staff and any other staff that will assist with the recount
3. The approximate number of hours it will take to manually count the race

You can send your cost estimate by completing the information in table below and replying to this email, or by completing the information in the table below and faxing to 444-2023.

EXHIBIT	
tabler	A

Thank you – and thank you for your diligence on election day.

Lisa Kimmet

Elections & Government Services Deputy

Office of Montana Secretary of State Linda McCulloch

406.444.5376

www.sos.mt.gov

County Name:	
Salaries	
Election Staff assisting with recount	
Supplies (if any)	
Other Costs (please specify)	

1. *Journal of the American Medical Association*, 2000; 284: 1039-1044.

polling place, tables, Judge notification

meals

mileage

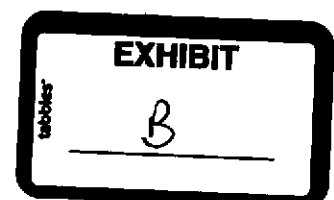
meals

lunch&coffee

lunch

meals/mileage for comm

security, Uhaul, room rent



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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

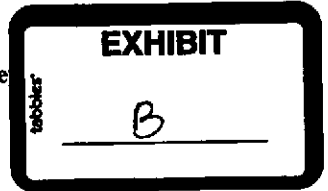
<p>SANDY WELCH, Candidate</p> <p>Applicant,</p> <p>v.</p> <p>LINDA MCCULLOCH, in her capacity as Secretary of State and secretary of the Montana State Canvass Board and STEVE BULLOCK, MONICA J. LINDEEN, AND DENISE JUNEAU, in their capacity as members of the Montana State Canvass Board,</p> <p>Respondents.</p>	<p>Cause No. DV-12-1369C</p> <p>AFFIDAVIT OF TOBEY DINGBAUM</p>
--	--

State of Nebraska)
) ss.
County of Douglas)

I, Tobey Dingbaum, being first duly sworn, hereby depose and say:

- I am the Manager of the Technical Support department at Election Systems and Software (ES&S).
- I have worked for ES&S for 10 years.

Affidavit of Tobey



2. The Technical Support department consists of a Hardware team and Software team that accepts incoming help desk calls pertaining to ES&S equipment and software.

3. In my position as Manager of the Technical Support department, I am very familiar with the operation of the M650 vote tabulator.

4. The M650 vote tabulator machines can jam, particularly if folded ballots, for example, are not properly prepped.

5. If a jam occurs, the M650 will indicate to the operator whether or not a ballot was counted.

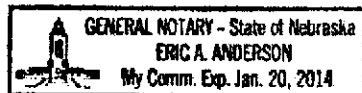
6. The jam itself will not cause the ballot to be partially counted or counted twice.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 6th day of December, 2012.

TOBEY DINGBAUM

Signed and sworn to before me on 12/16/12



Notary Public for the Nebraska
Residing at Omaha, Nebraska
My commission expires: 1/6

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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

Cause No. DV-12-1369C

10 Applicant,

**AFFIDAVIT OF
VICKIE ZEIER**

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

17 Respondents.

18 State of Montana)
19 County of Missoula) ss.

20 I, Vickie Zeier, being first duly sworn, hereby depose and say:

21 1. I am the Missoula County Election Administrator.

22 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
23 December 3, 2012.

24
25 Affidavit of Vickie Zeier

EXHIBIT

C

1 3. With regard to Count I, paragraph 22 of the Verified Application: The Missoula
2 County election documents prepared for the official canvass (poll books, absentee ballot
3 reconciliation forms, military ballot reconciliation forms and provisional ballot reconciliation
4 forms) indicated that 58,315 ballots were issued and processed to be counted. The optical
5 scanners (including the 650's and M100's) counted 58,313 ballots. The M100's counted 19580,
6 the 650's counted 38724 and we had 9 hand counted ballots for a total of 58,313. During a
7 canvass it is the responsibility of the Canvass board to compare the number of ballots issued by
8 reviewing the poll book which is used at the polling place and the various ballot reconciliation
9 forms to the number of ballots counted. Missoula County's Canvass board did not find any
10 errors that questioned the accuracy of the votes cast.

11 4. Missoula County does not know where the allegation of "13 precincts in Missoula
12 County alone, 399 more votes were tabulated than there were paper ballots counted by the M650
13 machines" comes from. Missoula County does not have any documentation that would derive to
14 this conclusion. Our canvass documents show no such conclusion as mentioned above.

15 5. With regard to Count III, paragraph 37 of the Verified Application:
16 The counting center that counts absentee ballots does not use the oval stickers to resolve an
17 elector's ballot. When voter intent is clear we follow the Montana Election Judge Handbook on
18 Determining a Valid Vote. We duplicate the ballot using a resolution ballot and log the original
19 ballot with a resolution number and the duplicate ballot with the same resolution number to tie
20 the two ballots together. At our polling places, the judges do not cover an over vote or error with
21 a label. The elector can choose to use a label or request a new ballot. If they choose a label they
22 correct their own ballot and they place their ballot into the M100 precinct optical scan machine
23 which counts the ballot.
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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

10 Applicant,

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
17 members of the Montana State Canvass
18 Board,

19 Respondents.

Cause No. DV-12-1369C

**AFFIDAVIT OF
RANA J. WICHMAN**

18 State of Montana)
19) ss.
County of Fergus)

20 I, Rana J. Wichman, being first duly sworn, hereby depose and say:

21 1. I am the Fergus County Election Administrator.

22 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
23 December 3, 2012.

24
25 Affidavit of Rana J. V

EXHIBIT

D

1 3. The M650 does not like the folds caused by the need to put the early/absentee
2 ballots in envelopes. The machine does not "jam" but rather either has trouble picking up a
3 ballot, or inadvertently picks up more than one ballot.

4 4. When it picks up more than one ballot, it stops itself and indicates duplicate
5 ballots were picked up. It has a written message on the machine that indicates the ballot was not
6 counted and needs to be run through again.

7 5. When the M650 rejects a ballot it does not count any of the votes for any of the
8 races on the ballot. I ran numerous test decks through the M650, including public tests on
9 November 2, 2012, and November 6, 2012.

10 6. At 10:00 a.m. on November 6, 2012, during an advertised public test, I ran ballots
11 through the M650 from each of the 16 Fergus County precincts that I had marked with
12 overvotes. After it rejected the entire uncounted overvote ballots I placed a small sticker over
13 the oval next to one candidate's name and reran the ballots. They were counted this time and the
14 resulting number of ballots and number of votes counted were 100% accurate.

15 7. While attempting to run one of our largest precincts through the M650, all of the
16 first pages of the ballots were rejected. After working with the M650 for a while, I personally
17 contacted ES&S, as they were the ones that printed our ballots.

18 8. It was determined that the ballots were printed just crooked enough that the
19 machine could not read one of the channel codes. It was not a code that affected a candidate, but
20 one that affected the machine being able to identify the ballot.

21 9. Transferring all of the valid votes to different ballots was not an option as we
22 would have needed several thousand new ballots, the marking of the votes wasn't the issue, and
23
24
25

1 if we moved the votes to new ballots like the ones that were voted we would have just moved the
2 problem to new ballots.

3 10. Per ES&S's instructions, as the election administrator, I personally adjusted one
4 channel code on the first page of the ballots for this precinct using a Sharpie marker. While the
5 poll watcher that was present wanted to help me with this, and was quite indignant that I would
6 not let him, I felt this was something I should do personally, with the poll watcher and various
7 election judges and political party representatives observing. Accuracy wasn't an issue or a
8 problem.

9 11. Sharpie markers were not used by any election judges other than me.

10 12. Stickers were placed on ballots if it corrected an over-vote where voter intent was
11 clear. At no time was a decision to do this made by one person. Documentation of every process
12 is made and signed off by judges.

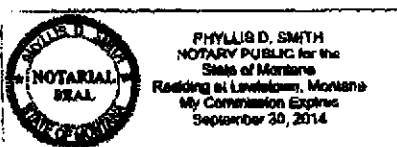
13 13. In regards to the allegations in Paragraph 27, it is my judgment that the operative
14 word is "condition". If a ballot is wrinkled, sticky, or had something spilled on it, its condition
15 would warrant transferring all valid votes.

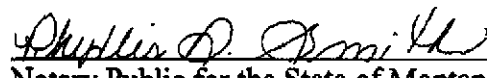
16 **FURTHER AFFIANT SAYETH NAUGHT.**

17 DATED this 6 day of December, 2012.

18
19 
RANA J. WICHMAN

20 Signed and sworn to before me on December 6, 2012



23 
Notary Public for the State of Montana
Residing at Newtown, Montana
My commission expires: Sept. 30, 2014

Quintana, Jorge

From: Dori Brownlow <dbrownlow@co.missoula.mt.us>
Sent: Tuesday, November 06, 2012 5:37 PM
To: Kimmet, Lisa
Cc: Anne Hughes; Zeier, Vicki; Quintana, Jorge
Subject: Re: FW: Ballot concern in Missoula County

Lisa,

I have looked into this concern regarding stickers used by voters to cover marks on their ballots. It's my understanding there are different counting procedures in some counties and therefore the concern may be because of a lack of understanding of Missoula County procedures. As explained below, in Missoula County the stickers are placed on the ballots by the voters and then immediately placed, by the voter, into the M100, which counts the vote.

In Missoula County ballots that are cast at the polling locations, other than provisionals, are run through the M100 machines. The ballot is placed into the machine by the voter. If the voter has a mark that indicates an overvote the M100 will tell the voter there is an overvote. The voter then has three options, 1. Leave it as an overvote; 2. Cover the mark the voter doesn't want counted; or 3. Void the ballot and vote a new ballot. If the voter chooses to place a sticker on the mark the voter doesn't want on his ballot, the voter him or herself places the sticker on the ballot. The voter then runs the ballot through the M100, at which time the ballot is counted. The other situation is when a voter realizes while voting that an error or stray mark was made. Once again, the voter has the option of using a sticker or obtaining a new ballot.

One misunderstanding I heard earlier today was that the ballots from the polling locations were transported to a counting center to be counted. The concern was that this opened up the possibility of a sticker falling off a ballot. I believe the fact that the ballots are counted at the polling locations addresses this concern.

Please feel free to contact me with additional questions.
Dori

>>> Vickie Zeier 11/6/2012 3:22 PM >>>

Lisa,

I've asked our Deputy County Attorney Dori Brownlow to look into this issue. We've had a couple of media inquiries on this as well.

Dori, can you provide an update?

Thank you!



Anne Hughes

>>> "Kimmet, Lisa" <LKimmet@mt.gov> 11/6/2012 3:20 PM >>>
Any information on this issue?

Lisa Kimmet
Elections & Government Services Deputy
Office of Montana Secretary of State Linda McCulloch
406.444.5376
www.sos.mt.gov

-----Original Message-----

From: Cory Swanson [<mailto:swanriver@usa.net>]
Sent: Tuesday, November 06, 2012 2:34 PM
To: Kimmet, Lisa; Miller, Alan
Subject: Ballot problems in Missoula County
Importance: High

Lisa and Alan,

I have just received a call from the Montana Republican Party that the Missoula County elections office is using stickers on double-marked ballots, and that the stickers are falling off, which puts these ballots in jeopardy of not being counted.

Apparently a number of calls to your office are going un-returned on this issue, so I am reaching out to see if we can find out if the Missoula County procedure is following the appropriate guidelines.

Could one of you please call me at your earliest convenience? I am leaving the office to attend meetings, but I am available on my cell phone. Thank you for your attention on this matter.

Cory Swanson
1 S. Montana Ave., Suite L-1
Helena, MT 59601
W: 406-449-3118
C: 406-459-6359
F: 406-449-0667

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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

10 Applicant,

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

17 Respondents.

Cause No. DV-12-1369C

**AFFIDAVIT OF
DEBBIE SCOTT**

18 State of Montana)
19) ss.
County of Beaverhead)

20 I, Debbie Scott, being first duly sworn, hereby depose and say:

21 1. I am the Beaverhead County Election Administrator.

22 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
23 December 3, 2012.
24
25

Affidavit of Debbie

EXHIBIT

F

3. Two absentee voters came to the Clerk and Recorder's Office prior to election day and requested correction stickers to fix errors they themselves had made on their ballots.

4. The two absentee voters were offered replacement ballots, but insisted that they only wanted to correct their ballot and not vote a completely new ballot.

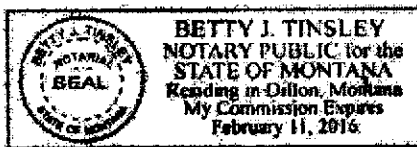
5. In these two cases, the voter themselves placed the correction sticker on their ballot.

6. During the vote counting process, Counting Judges used correction stickers to cover stray marks or incomplete erasures of ovals on several ballots where the voter's intent was clear. The correction sticker was placed over the unvoted oval, as a means of correctly presenting the ballot to the M650 or M100 voting machine, so that it could be properly counted.

FURTHER AFFIANT SAYETH NAUGHT.

DEBBIE SCOTT

Signed and sworn to before me on 12/6/62



Beth J. Ansley
Notary Public for the State of Montana
Residing at: Billon, MT
My commission expires: 2-11-2016

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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

Cause No. DV-12-1369C

10 Applicant,

**AFFIDAVIT OF
SALLY HOLLIS**

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

17 Respondents.

18 State of Montana)
19 County of Silver Bow) ss.

20 I, Sally Hollis, being first duly sworn, hereby depose and say:

21 1. I am the Silver Bow County Election Administrator.

22 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
23 December 3, 2012.
24
25

Affidavit

EXHIBIT

G

1 3. At the polling place, the Butte Civic Center, I use thirteen M-100 machines at
2 designated precincts.

3 4. When an elector has voted for the wrong person they inform the chief election
4 judge of the error.

5 5. The chief judge asks the elector to vote a new ballot. If the elector refuses and
6 state they want a sticker to cover the error themselves, one is supplied.

7 6. Only the elector touches the sticker and applies it to the wrong candidate and then
8 inserts the ballot into the M-100 precinct optical scan machine which counts the ballot.

9 7. At no time does any chief judge or judges touch or look at the voter's ballot.

10 8. The tabulating of votes was done in the Annex, back of the Civic Center, with
11 five M-100 machines.

12 9. I have a Resolution Board with two teams of three that addresses any problems
13 with a ballot. They duplicate the ballot using a resolution ballot and by filling out the Resolution
14 Ballot Board Reconciliation Form.

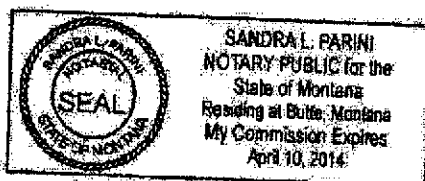
15 10. There are no stickers in the Annex.

16 **FURTHER AFFIANT SAYETH NAUGHT.**

17 DATED this 6th day of December 2012.

18
19 Sally J. Hollis
 SALLY J. HOLLIS

20 Signed and sworn to before me on December 6th 2012



Sandra L. Parini
Notary Public for the State of Montana Sandra L. Parini
Residing at Butte, Montana
My commission expires: April 10, 2014

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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

Cause No. DV-12-1369C

10 Applicant,

**AFFIDAVIT OF
RINA MOORE**

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

17 Respondents.

18 State of Montana)

) ss.

19 County of Cascade)

20 **I, Rina Moore, being first duly sworn, hereby depose and say:**

21 1. I am the Cascade County Election Administrator.

22 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
23 December 3, 2012.

24
25 Affidavit

EXHIBIT

tabbier
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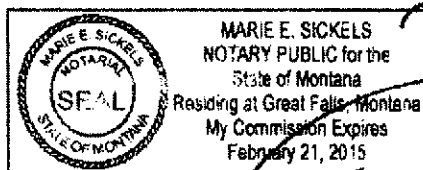
3. Per Mont. Code Ann. § 13-13-116, my office pre-prints the "official ballot" stamp on the back of our ballots. Our judges have a manual stamp that they can use in the case of printer error.

4. All the ballots in Cascade County were either stamped or printed with "OFFICIAL BALLOT."

FURTHER AFFIANT SAYETH NAUGHT.

IT. Rina Moore
RINA MOORE

Signed and sworn to before me on 12/6/2012



Notary Public for the State of Montana
Residing at Great Falls
My commission expires: 2/21/2015

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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

Cause No. DV-12-1369C

10 Applicant,

**AFFIDAVIT OF
GLENDA M. HALL**

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

17 Respondents.

18 State of Montana)

) ss.

19 County of Glacier)

20 I, Glenda M. Hall, being first duly sworn, hereby depose and say:

21 1. I am the Glacier County Election Administrator.

22 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
23 December 3, 2012.

24
25 Affidavit of G

EXHIBIT

I

1 3. On the evening of November 6, 2012, I received a telephone call from Gail
2 Augare, my Polling Place Manager at the Browning Polling Place, CCD Center, informing me
3 that Precinct #8 was beginning to run low on ballots and asking me what to do. I informed her
4 that we have a contingency plan to deal with this issue and in the worst case scenario we make a
5 select number of paper copied ballots for that precinct. These paper copied ballots will not have
6 the number stubs on them, but we denote that in the poll books.

7 4. After my telephone conversation with Ms. Augare, I immediately called Alan
8 Miller, at the Secretary of State's Office. He reiterated that they had warned counties to be
9 prepared with extra ballots. He then asked what the contingency plan was. I relayed the same
10 information to him that I had to the polling place manager--that we would make paper copied
11 ballots that were precinct specific.

12 5. We began the process of making the paper copies in batches of 25, while at the
13 same time pulling what ballot stock we had "on hand" at the courthouse. (This accounts for
14 ballot stock held at the courthouse for the same-day registration process.)

15 6. In the meantime, other precincts called with the same issue. Out of 16 precincts in
16 Glacier County, we made paper copied ballots for six precincts. A table listing the precincts that
17 had to use paper copied ballots and the number of those ballots that were issued is attached as
18 Exhibit A.

19 7. Once all precincts ballot supplies were sealed, I personally transported and
20 delivered the paper copied ballots as well as the additional ballot stock to the necessary precincts.

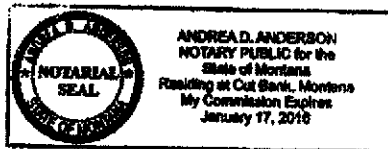
21 8. I stayed at the CCD Center until the close of polls to oversee the issuance of the
22 paper copied ballots for these particular precincts.

9. At the central count all of the paper copied ballots were hand counted. In fact they were double counted because Glacier County did have a declared write-in candidate, so all of these ballots went through two counting boards.

FURTHER AFFIANT SAYETH NAUGHT.

Glenda M. Hall
GLENDA M. HALL

Signed and sworn to before me on 12.6.2012



Andrea Anderson
Notary Public for the State of Montana
Residing at Cut Bank
My commission expires: 1.17.2016

Precinct	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	21C	Total
Polling Place	CB	CB	CB	CB	Geo El	Cl He	CCD- Br	CCD- Br	SO P	Black/ I	CCD- Br	CCD- Br	C/ Hs	Bob S	Star I	CCD- Br		
Total Voters	899	839	412	280	997	54	374	1888	427	164	361	371	48	252	288	633	7818	
Total Absentee Ballot Cast	289	227	163	121	306	23	109	287	124	57	82	60	20	117	36	34	2814	
Total Polling Place Ballots Cast	166	128	112	68	188	10	175	841	170	42	134	222	1	82	314	139	2287	
Total Ballots Issued	6	0	0	0	19	0	34	0	0	0	1	4	0	0	0	22	83	
Total Votes Cast	465	398	285	178	818	33	345	975	295	161	294	185	28	218	184	204	4554	
Range Voter Turnout	73 %	78 %	67 %	67 %	71% %	61% %	63% %	48% %	68 %	64% %	64% %	48% %	62% %	63% %	62 %	31% %	68% %	
Provisional	9	5	10	2	6	0	21	64	2	2	7	4	0	7	4	11	167	
Late Absentee Count							2	13				3				4	23	

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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 SANDY WELCH, Candidate

Cause No. DV-12-1369C

10 Applicant,

**AFFIDAVIT OF
PAULETTE DEHART**

11 v.

12 LINDA MCCULLOCH, in her capacity as
13 Secretary of State and secretary of the
14 Montana State Canvass Board and STEVE
15 BULLOCK, MONICA J. LINDEEN, AND
16 DENISE JUNEAU, in their capacity as
members of the Montana State Canvass
Board,

17 Respondents.

18 State of Montana)
19) ss.
County of Lewis and Clark)

20 I, Paulette DeHart, being first duly sworn, hereby depose and say:

21 1. I am the am the Lewis and Clark County Election Administrator.

22 2. I have read the Verified Application for Manual Recount filed by Sandy Welch on
23 December 3, 2012.
24
25

Affidavit of Paulette D

EXHIBIT

J

1 3. Candidate Ripley's concerns were not dismissed by officials. After being
2 informed of Mr. Ripley's concerns I double checked the tabulators counting of the ovals and
3 ensured that the reports off the tabulators were loading correctly into the reporting software.

4 4. My next step was to contact the vendor that programs the ballots. They were
5 asked to check their coding.

6 5. I received a phone call from the vendor indicating they had made a coding error.
7 The ovals for Candidate Ripley were reported under the opposing candidate and vice versa.

8 6. I then requested the vendor check their programming on every race and every
9 issue of the ballot.

10 7. This process took them a couple of days. The result was an email from the
11 vendor saying they had checked every race and every issue on all the ballots and the only
12 program "glitch" was the Senate District 9 race involving three precincts.

13 8. Once ballots are tabulated they are sealed and they cannot be opened absent a
14 recount or a court order. On November 19, 2012, the canvass for Lewis and Clark County took
15 place. I informed the Board of Canvassers of the program glitch reported by the vendor. I also
16 provided the Board of Canvassers the documentation received indicating that all other races and
17 issues program tested correctly. See Exhibit A.

18 9. Based on this information, and in accordance with Mont. Code Ann. § 13-15-
19 403(4), the Board of Canvassers did petition for a recount of Senate District 9. See Exhibit B.

20 10. A recount was held and the results were correctly reported and a letter was mailed
21 to Mr. Ripley thanking him for bringing it to our attention and giving him the final totals.

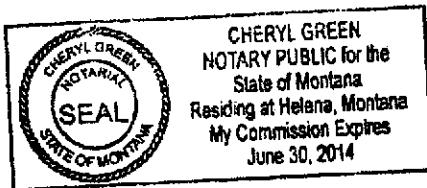
22 **FURTHER AFFIANT SAYETH NAUGHT.**
23
24
25

1 DATED this 6th December
2 day of November, 2012.

3 Paulette DeHart
4 PAULETTE DEHART

5 Signed and sworn to before me on 12/6/12.

6 Cheryl Green Cheryl Green
7 Notary Public for the State of Montana
8 Residing at Helena
9 My commission expires: 6/30/2014



Marilyn Bracken - Lewis & Clark, MT General Election Coding

From: "Chandler, Susan M." <suschandler@essvote.com>
To: "Marilyn Bracken" <MBracken@co.lewis-clark.mt.us>
Date: 11/16/2012 2:03 PM
Subject: Lewis & Clark, MT General Election Coding
CO: "McDonald, Jason" <jpmcdonald@essvote.com>, "Devereaux, Sueann" <sgdever...

Marilyn,

Concerning your General Election Coding -

We printed two sets of your ballots onsite, and completed a VF1 and Random test. We hand marked a VF1 (vote for the same person on all ballots) and ran it with the coding. Then we hand marked a second set of ballots with random votes. We ran all of the ballots on the 650 and checked all of the races for votes. We also hand counted races to do a double check. After our testing the only race that we found with any coding error was the State Senator District 9 race.

If you have any additional questions or concerns, please let us know.

Thank you,
Susan

Susan Chandler
Election Services - Team Lead
Election Systems & Software
11205 John Galt Blvd Omaha NE 68137
Phone 1-377-377-8669 ext. 1521
Fax 1-402-970-1285
suschandler@essvote.com

Shop our online store today by clicking on the link below:

<http://www.essvote.com/ET&M/Store/store.html>

ATTENTION: For order #1215, contact Jason Smith, #OnCall, who will be sent by Certified Mail with a return receipt. You can provide tracking number should anything happen to the shipment. If you are not receiving without a tracking receipt, we will not be responsible for replacing it.

IMPORTANT: If you require a Purchase Order # to be included with your invoice for Ballot Layout or Coding services, please submit it now.

ES&S Confidential: Internal Release to ES&S Associates and External parties with a valid need to know.



BOARD OF COUNTY COMMISSIONERS

Derek Brown

Andy Hunthausen

Michael A. Murray

City County Building 316 North Park Avenue Helena, Montana 59623 Phone 406.447.8304 Fax 406.447.8370

Greetings:

Based on the attached information and in accordance with MCA 13-15-403, Section (4):

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420.

We the Lewis and Clark County Board of Canvassers do hereby petition for a recount of the Senate District #9 race voted on in precincts 44, 45 and 46.

Dated November 19th, 2012.

Michael Murray
Monika Davis
Leo C. Dutton

EXHIBIT

B